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Critical and Radical Social Work

'No Recourse to Public Funds', insecure immigration status and destitution: The Role of Social Work? --Manuscript Draft--

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Abstract:	Those with insecure immigration status in the UK maybe subject to a condition known as 'No Recourse to Public Funds' (NRPF) and risk the prospect of facing destitution within the complex landscape of a discriminatory immigration system. This article examines NRPF and reports findings from ethnographic research. It documents tensions between immigration legislation and social services statutory duty to safeguard and promote the welfare of destitute NRPF families with children.
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Introduction

Despite considerable literature within social work focusing on refugees and asylum seekers (Harwick, 2015; Mulvey, 2015; Robinson, 2014; Newbigging and Thomas, 2011; Nash et al, 2006; Sales, 2002), little engagement has explored the experiences of those with ‘No Recourse to Public Funds’ (NRPF). The Scottish Parliament’s Equalities and Human Rights Committee published ‘*Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in Scotland*’ (Scottish Parliament, 2017) and raised concerns local authorities were not implementing NRPF guidance, including human rights assessments. This article is based upon evidence submitted by the author towards the inquiry whilst conducting ethnographic research with The Women Asylum Seeker Housing Project (WASH) in Glasgow.

According to the UN Refugee Agency (UNHRC, 2016) ‘65.6 million individuals were forcibly displaced worldwide as a result of persecution, conflict, violence, or human rights violations’ in 2016 and remains a record high. Consequently, an examination of the increasingly complex landscape of immigration policy and practice through the lens of NRPF families with children is required. It is argued that those on the margins of society are subject to racialized and gendered discrimination as immigration control is privileged above child welfare. As social work becomes increasingly entangled within immigration control, research is informed methodologically by ‘controversy analysis’ (Venturini, 2010) in order to comprehend what it means for the profession ‘to live, to know, and to practice in the complexities of tension’ (Law and Hassard, 1999).

Everyday Borders

Historically, immigration discourse within the UK has always been subject to racial discrimination and prejudice since the first piece of legislation, the Aliens Act 1905 emphasised immigration control of ‘undesirable aliens’. Current global rhetoric accentuates anti-immigration sentiments from ‘Fortress Europe’ to the walls and borders advocated by the US Administration and right-wing ‘moral panic’ over immigration continues to dominate. During an interview as Home Secretary, Theresa May announced plans to create a ‘hostile

environment' within the UK for those she considered 'illegal immigrants' (Kirkup and Winnett, 2012). This charged context has been subject to immigration controversies such as asylum seekers having their doors painted red by private contractor G4S in Middlesbrough (Dearden, 2016) and being forced to wear coloured wristbands in Cardiff (Taylor, 2016). A recent study explored immigration controversies in response to UK Home Office initiatives such as the notorious 'Go home or face arrest billboards' and argue they provoke anger and fear in relation to a complex immigration system, creating profound misinformation. Jones et al (2014: 3) warn;

"The different legal statuses that migrants can have is confusing, and for many people in the wider public, the distinctions between 'illegal' and 'legal', and between asylum seeker, refugee, student, worker, resident, and sometimes between migrants and ethnic minority British-born people is difficult to understand."

The current immigration system is complicated and can facilitate much confusion in various areas such as policy, law and practice. Consecutive immigration legislation has muddled the waters to such an extent and to keep up with consistent changes requires ongoing dedication attention. Whilst it is not possible to provide an extensive exploration of the immigration system within the UK, it is important to outline key pieces of legislation and policy in order to comprehend the context NRPf families with children are situated within.

Alongside '*Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum*' (Home Office, 1998), a significant piece of legislation is The Immigration and Asylum Act 1999 because it removed state support from asylum seekers whilst increasing detention, deportation, forced dispersal and introduced a voucher system (Cohen et al, 2002). The slick modernised New Labour approach to immigration privileged a 'fair but firm' contradictory position and paved the way for the current 'something for nothing' stance:

"...what we need to do is to work across government so that our immigration policy is factored into our benefits system, our health system and our housing system. And let me set out how we are going to do this: by stopping our benefits system from being such a soft touch; by making entitlement to our key public services something migrants earn, not an automatic right" (David Cameron, 2013).

1 Yuval-Davies et al (2015) argues current government policy extends the ‘hostile
2 environment’ into daily life and illustrates an ‘everyday border’, whereby immigrants become
3 further constructed as ‘undeserving’ within policy circles, affecting access to public
4 assistance (Yoo, 2008). *Secure Borders, Safe Haven: Integration with diversity in modern*
5 *Britain* (Home Office, 2002) emphasised the ‘everyday border’ with sentiments such as ‘the
6 need to tackle criminals who abuse our borders’. In this context, the association of criminality
7 creeps into immigration discourse and notions of ‘illegality’ surface within a ‘genuine’ vs
8 ‘bogus’ dichotomy. Subsequently, a reflection of what Furman et al (2012) refers to as the
9 ‘criminalization of immigration’ occurs. The 2014 and 2016 Immigration Acts are testimony
10 to this argument as reporting ‘immigration abuse’ extends to UK residents within everyday
11 life. For example, private landlords are now required to check the immigration status of
12 tenants making the notion of an ‘everyday border’;
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22 “a political project of belonging experienced in contrasting ways by differently situated
23 people and constructed as both a bottom-up populist discourse and a hegemonic policy
24 discourse constructed by new immigration legislation and penetrating into all areas of public
25 services.” (Yuval-Davies et al, 2015)
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31 As the context of the ‘everyday border’ infiltrates daily life, categorizations become
32 increasingly problematic amidst fear and suspicion within a climate of ‘illegality’. According
33 to the Platform for International Cooperation on Undocumented Migrants (PICUM, 2011)
34 this can have a devastating impact for those with insecure immigration status due to the
35 connotation with criminality. Such a context requires a critical approach from social work in
36 order to comprehend the ‘hostile environment’ NRPF families are situated within.
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46 **Bordering through ‘No Recourse to Public Funds’ (NRPF)**

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49 Pending a decision from the Home Office, granting permission to stay in the UK often entails
50 being subject to an NRPF condition, a legal restriction within Section 115 of the Immigration
51 and Asylum Act 1999. There can be various reasons why a person may have NRPF status or
52 a simple change in their circumstances might affect their immigration status and remove
53 entitlement to public funds. However, the central impact of this discriminatory legislation
54 prohibits families from accessing ‘public funds’ such as welfare benefits, social housing and
55 homelessness assistance. Indeed, NRPF is an often misunderstood area due to the complexity
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1 surrounding immigration terminology and the slippery nature of labels used to categorise
2 those within the immigration system. The NRPF Network (2017) outline those affected
3 usually include;
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- 5 • Asylum seekers
- 6 • Refused asylum seeker
- 7 • Special visa categories, such as spousal, student and some human rights cases
- 8 • People who have overstayed their visa
- 9 • Undocumented or irregular migrants
- 10 • Some European Economic Area (EEA) migrant cases
- 11 • People who have leave to remain but with a 'NRPF' condition

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22 *Hidden Lives - New Beginnings: Destitution, asylum and insecure immigration status in*
23 *Scotland* (Scottish Parliament, 2017) demonstrated destitution is 'built into the immigration'
24 system, further traumatising individuals and families and increasing their risk of exploitation
25 and health issues. Notably, specific attention is given to those who are subject to immigration
26 control but are not part of refugee resettlement programmes. This acknowledgment remains
27 crucial within a context characterised by the 'deserving' refugee vs the 'undeserving' or
28 'bogus' asylum seeker as NRPF families who are forced to survive on the extreme margins of
29 society. The inquiry heard from those with insecure immigration status and evidence
30 documented "the asylum and immigration system is peppered with points at which the risk of
31 destitution becomes likely", whereby "the sheer complexity and inaccessibility of the process
32 makes it unnecessarily difficult in practical terms" (Scottish Parliament, 2017: 3).
33 Nonetheless, the report concluded that all children within NRPF families face the risk of
34 destitution should they be unable to access the necessary support.
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50 With this in mind, when it comes to accessing support, considerable understanding in relation
51 to terminology becomes essential in such a complex environment. Quite simply, specific
52 immigration statuses such as 'refugee', 'asylum seeker', 'refused asylum seeker' and 'visa
53 overstay', or 'undocumented' all have varying rights and entitlements. Anderson and
54 Blinder (2012) take up the contested area of immigration terminology and consider 'who
55 counts as a migrant?' They argue the term 'migration' is problematic as discussions often
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1 fuse issues that associate immigration, ethnicity, asylum, refugees and foreigners in a slippery
2 manner, which ultimately confuse. Crucially, definitions can be interpreted differently and
3 have consequences in many areas such as policy, the law and in public debate. For NRPF
4 families, the impact is sharpest in relation to rights and entitlements when accessing support
5 within a climate of suspicion alongside the notions of 'illegal vs legal' filtering through
6 everyday relations.
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14 What does this mean when asking who counts within the context of destitution? Where do the
15 margins of exclusion begin and end within a complicated and technical immigration system?
16 Currently, refugees in most cases have recourse to public funds, and can access support if
17 destitute. However, if they are newly recognised refugees there may delays until they have
18 the appropriate documentation (Hutton and Lukes, 2015). Additionally, whilst destitute
19 asylum seekers and refused asylum seekers are subject to NRPF conditions, they fall under
20 Home Office provision and eligible for accommodation and financial assistance under
21 Section 95 and Section 4 of the Immigration and Asylum Act 1999. Also, if a refused asylum
22 seeker is 'appeal rights exhausted', then the Home Office may provide support under Section
23 4. Therefore, in theory it is unlikely asylum and refused asylum seekers should have to
24 approach the local authority in regards to destitution. Nevertheless, it is important to keep in
25 mind the various reasons in which individuals and families find themselves with a NRPF
26 condition, such as trafficking, domestic abuse and bureaucratic delays. Crucially, an
27 important element remains, NRPF families are on the absolute margins as a result of their
28 immigration status and are unable to claim state benefits or access Home Office support in
29 most cases. Therefore, approaching the local authority through social services is often a last
30 resort and a final safety net when destitute.
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49 **Social work as the 'border guard'**

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52 The introduction of NRPF received particular attention from the Southall Black Sisters (SBS,
53 2007) who established the 'Campaign to Abolish No Recourse to Public Funds'. They have
54 consistently argued that NRPF is a restrictive and discriminatory policy with racialized and
55 gendered impacts. However, little attempt has been initiated by social work to fully
56 comprehend the realities of how the profession maybe potentially complicit in an oppressive
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1 system (Humphries, 2004). Destitute NRPF families surviving a hostile environment as so-
2 called ‘illegal immigrants’ present social work with many inherent tensions and ethical
3 dilemmas. This is because the NRPF condition restricts access to public funds such as
4 making homelessness applications; support from social services is not a public fund. Coram
5 Children’s Legal Centre (CORAM, 2013: 19) state;
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10 “as financial support from a local authority under community care and children’s legislation
11 is not a ‘public fund’, if a person with no recourse to public funds becomes destitute and/or
12 homeless they may be entitled to support with accommodation and subsistence from the local
13 authority Local Authority Duty of Care.”
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18 The NRPF Network (2011) looked at quantitative data in England, Scotland and Wales in
19 relation to local authority support for NRPF families and documented inconsistency of
20 practice, a lack of statutory guidance and an absence of funding. It was recommended that
21 dedicated NRPF teams were necessary to ensure good practice guidelines were implemented.
22 Moreover, a recent report by The Children’s Society (2016) provided data showing
23 immigration controls are overshadowing children’s rights and argue NRPF conditions lead to
24 extremely precarious circumstances. For example, figures from 35 local authorities
25 documented “1,719 families requested support, 652 were provided with support and 6 in 10
26 families were not supported when they approached their local authority for support” (Dexter
27 at al, 2016: 18). Recent media coverage has also drawn attention to the lack of support NRPF
28 families face when approaching social services including threats to remove children (Lyons,
29 2017). North East London Migrant Action (NELMA, 2017) is a campaigning group who
30 challenge the injustices faced by NRPF families who approach social services for support.
31 Their accompanying scheme documents harrowing testimonies from families;
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44 “My solicitor had to send them a letter for them to house me. They said they weren’t there to
45 help. Then they did the credit checks before they even saw the children. They don’t believe
46 you are destitute, but why would you go there if you had anywhere else to be?”
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54 An alternative organisation tackling this issue is Project 17, with a focus on ensuring the local
55 authority implement their duty to safeguard and promote the welfare of children in need
56 under The Children Act 1989. They provide NRPF advice, advocacy and training and have
57 supported more than 800 families across London. In a recent Guardian article, they warn
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1 demand is growing as the tensions between children's rights and immigration unfold and
2 "councils try to avoid supporting families, often breaking the law and leaving children
3 destitute to save money" (Brunswick, 2017). Children's rights remain at the forefront of this
4 injustice as the *United Nations Convention on the Rights of the Child* (UNCRC) (UN, 1989)
5 sets out international legal duties on the UK and states;
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10 "...all children's rights should be respected, without discrimination of any kind, irrespective
11 of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion,
12 political or other opinion, national, ethnic or social origin, property, disability, birth or other
13 status"
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18 Additionally, key legislation in the UK proclaims to protect all children regardless of their, or
19 their parents immigration status. The Children Act 1989 and 2004, Children's Act (Scotland)
20 1995 and Children (Northern Ireland) Order 1995 all have general duties to safeguard and
21 promote the welfare of children 'in need'. However, research from Price and Spencer (2015:
22 57) document concerns surrounding the 'provision of accommodation and subsistence
23 payments by Children's Services department' to NRPF families. The research suggests that a
24 focus on immigration status dominated assessments alongside problematic resource concerns,
25 as NRPF support is generated from social care budgets and not central government funding.
26 The impact of this included placing families in unsuitable living conditions, creating a
27 'dysfunctional system in which children are the ultimate losers' (Price and Spencer, 2015:
28 57). Therefore, there remains a gap between the rhetoric of child protection policy as the
29 means of providing a final safety net, and the material reality of being excluded from
30 mainstream state welfare.
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45 **Asylum Seeker Housing Project (ASH)**

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48 Gatekeeping;
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51 "...a word colloquially used amongst advisers to homeless applicants or migrant families to
52 describe a practice of employing tactics to deliberately reduce the number of families to
53 whom a local authority must provide support" (Threipland, 2015: 4).
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57 The following evidence is drawn from the author's ethnographic fieldwork at the Women
58 Asylum Seeker Housing Project (WASH) in Glasgow over an 8-10 month period. Ethical
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1 approval was obtained from The School of Health and Life Sciences ethics committee at
2 Glasgow Caledonian University, to ensure and protect the safety, rights, wellbeing and
3 dignity of all involved. The cases involved destitute NRPF families with children who were
4 attempting to access statutory support for accommodation and financial assistance under
5 Section 22 of The Children's (Scotland) Act 1995. The families involved were unable to
6 claim state benefits or access Home Office support due to their insecure immigration status.
7 Thus, they were about to be evicted, or become street homeless.
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16 *NRPF and social services assessments*

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18 One of the main concerns from the research involved refusal of support for destitute NRPF
19 families with children, due to their NRPF status:
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22 “They’ve just got notes on their screen to say they cannot support me, they themselves cannot
23 support me because I’ve got no recourse to public funds. If a child has been left six months
24 without support, the city council has to be answerable to.” (Service User K)
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28 Although legal frameworks and policy clearly outline social services is not considered a
29 public fund, there remained numerous occasions that support was refused on the basis of
30 NRPF. Despite Schedule 3 of the Nationality, Immigration and Asylum Act 2002, which
31 creates difficulty for some families accessing support, those with NRPF should not be
32 prevented or restricted from accessing local authority support (NRPF Network, 2017).
33 Additionally according to Jennings (2014), social services have to conduct a Human Rights
34 Assessments prior to denying support to avoid breaching Article 3 of the European
35 Convention on Human Rights. Concerning responses service users received alongside denial
36 of support included inappropriate immigration statements:
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47 “All the time, their advice, you guys go back to country. I said we are not coming to ask for
48 advice for immigration, we ask for house, because of the rules of Scotland to child you must
49 act. But they are always coming to the circle point, you are not allowed, because at that time
50 they want to lock us because of immigration status. They are not treating me like a human
51 being...their advice straight away was; you are not allowed to stay in this country...you are
52 not eligible to stay in this country. They never care a single thing, they never listened.”
53 (Service User X)
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1 This is a disturbing theme to emerge as giving immigration advice unqualified has been
2 unlawful since the Immigration and Asylum Act 1999 and is regulated by the Office of the
3 Immigration Services (OISC). Potentially, social workers who give immigration advice such
4 as suggestions advocating ‘returning to the country of origin’ could be committing a criminal
5 offence.
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10 11 12 *Accommodate child but not parent*

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15 All service users were scared to engage with social services and the support of an advocacy
16 organisation became essential. Lack of awareness in relation to of rights contributed to the
17 uncertainty of the situation alongside misinformation regarding the legalities of removing
18 children from the care of their parents. One service user stated;
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23 “In a situation whereby I had nowhere to go, they think about the well-being of the child, so
24 that was to put the baby in with another family, that’s what they threatened me with.”
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27 (Service User K)
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30 Another case study documented threats to remove the child rather than to give support:
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33 “They use threatening words. Usually they say go back to Sri Lanka, now they using take
34 baby away!” (Service User X)
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37 Legally, it is considered where destitution is the sole concern, threats to remove children
38 rather than offer support is likely to be unlawful and breach the family’s rights under Article
39 8 EHRC (Jennings, 2014). In cases such as these, it remains crucial legal advice should be
40 sought immediately.
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48 *Inadequate levels of support*

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50 The experience of securing support from social services is extremely challenging and equally
51 concerning is the standard of accommodation and level of subsistence financial payments
52 provided. For example, a service user had been placed in inadequate bed and breakfast
53 accommodation for up to 2 years, with no cooking or laundry facilities. She recalls the
54 challenges explaining the situation to her 6 year old daughter;
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1 “Why were we living in a hotel? Why do we not have our own house? And as she got older it
2 got more and more difficult to explain to her satisfaction the answer to these questions. She
3 was like why do I not have my own room, my own bed? Why are we not like other people?
4 And she often expressed a desire to be able to live in her own house and that was very
5 difficult for her to deal with and it was also very difficult for me to explain to her.” (Service
6 User C)
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11 In addition, although no legal standard has been set for statutory payments in law, there still
12 remains a duty upon the local authority to rationally meet its obligation to ‘safeguard and
13 promote a child’s welfare’ (Jennings, 2014). Unfortunately, NRPF families are surviving on
14 as little at £25 per week for a mother and baby;
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20 “You came to visit me on Friday 15/12/2016 after 6pm to the house. You left me telephone
21 numbers to contact and follow up on the accommodation matters when I also made it clear to
22 you that the B&B was not a healthy option for me and the baby when you were dropping us
23 off £50 to take us till January 2017 when you're back to work.” (Service User K)
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28 Arguably, the question remains whether such low levels of financial support at £25 per week
29 for a mother and baby is sufficient to meet ‘essential living needs’ such as food, clothing,
30 toiletries and household goods. Jennings (2014) highlights relevant comparisons for financial
31 support which local authorities should be mindful of. For example, Home Office asylum
32 support is set at £36.95 per person for an asylum seeker and £35.39 per person on a payment
33 card for a refused asylum seeker. Thus, at £25 per week for a mother and baby, such low
34 levels of support are concerning, as case law suggest in *R (VC and others) v Newcastle City*
35 *Council* [2011] EWHC 2673.
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46 **Conclusion**

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49 The experiences of destitute NRPF families demonstrates the implementation of the
50 ‘everyday border’ (Yuval-Davies, 2013) and provides intricate understanding of the
51 challenges within the immigration landscape. Evidence gathered from ethnographic research
52 at WASH with NRPF families demonstrates the transfer of ‘gatekeeping at the border’ to
53 ‘gatekeeping access to services’ (Van der Luen, 2006). As the Immigration Act 2016 unfolds,
54 concerns have been raised the regarding the removal of Home Office Section 95 support
55 which may further increase the risk of destitution and have massive implications for social
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workers (Schraer, 2015). Within a hostile environment welfare exclusion becomes a tool for controlling immigration and social workers assume the role of 'border guard'. In principle, whilst the language of child welfare legislation and policy remains the same and prioritise the duty to safeguard and promote the wellbeing of a 'child in need', in reality, immigration concerns overshadow. All children should have the same rights, regardless of their parent's immigration status and to deny this pushes families into dangerous and exploitative situations.

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